DIRECT INVESTIGATION REPORT

REGULATORY SYSTEM OF LIFTS

August 2009

Office of The Ombudsman

Hong Kong

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EXECUTIVE SUMMARY

Direct Investigation on Regulatory System of Lifts

Background

In the wake of lift incidents since October 2008 and amid grave public concern, The Ombudsman decided to initiate a direct investigation into the regulatory system of lifts administered by the Electrical and Mechanical Services Department ("EMSD") on 15 January 2009. The ambit of the investigation includes:

(a) lift examination requirements under the Lifts and Escalators (Safety) Ordinance (Cap 327);

(b) EMSD's monitoring measures;

(c) the effectiveness of the regulatory framework; and

(d) possible areas for improvement.

Regulation of Lifts in Hong Kong

2. The regulatory framework for lifts rests on three legs.

(a) Statutory certification system

3. A lift owner has to arrange for lift examination by a registered lift engineer ("RE") at least once every 12 months. If examination results are satisfactory, the RE, through a registered lift contractor ("RC") who normally is his employer, will issue a lift certificate. The lift owner then delivers the certificate to EMSD for endorsement, after which it is returned for conspicuous display in the lift. These steps are subject to stringent time-lines. EMSD can direct the lift owner to conduct an examination of the lift by issuing a Form 9 order and follow up by issuing a Form 16 order to prohibit the use of the lift.

(b) Registration of Contractors and Engineers

4. Only contractors and lift engineers registered with EMSD (i.e. REs and RCs) are eligible to carry out repair and maintenance of lifts. EMSD runs an administrative demerit point system (Performance Monitoring Points System or "PMPS"): a RC or RE may be referred to a disciplinary board which can impose sanctions, including the removal of a RC or RE from the register.

(c) Direct Inspection and Enforcement Action

5. EMSD conducts inspections of lifts and issues warning letters for breach found under PMPS. However, from 2005 to 2008, EMSD issued only two Form 9 orders and considered referring only one case to the disciplinary board.

EMSD's Improvement Measures

6. After the lift incidents, EMSD has taken immediate measures to strengthen the regulatory regime. The measures include legislative review for RE registration and level of penalties, stepping up lift inspections, surprise inspections to verify whether the RE had examined the lifts personally, ensuring speedy announcement of serious lift incidents, disclosing RC performance through a performance rating system and enhance public education on lift safety.

7. Since commencement of our investigation, EMSD has taken further measures. These include early reminders to RCs and/or lift owners for lift examination, early site inspections in overdue cases, timely issue of orders for lift examination, investigating cases where lift certificate submission is overdue for 12 weeks, warning RCs and REs on repeated late examination of lifts, and notifying lift owners of non-compliance items found by EMSD in addition to according demerit points to RCs and REs.

Problems identified and Our Observations

8. We commend EMSD's increase in direct inspection and firm enforcement following the spate of lift incidents. However, Government alone cannot, and should not, assume total responsibility for the maintenance and safety of each and every lift in Hong Kong. EMSD should promote the principles of "shared responsibility" and enable "user surveillance".

9. Lift owners have a personal interest as lift users. They have a prime responsibility and they share it with the RCs and REs they engage to service their lifts. The safety certificate is a key instrument in enabling "user surveillance". Properly documented, the certificate is both a safety assurance and a key source of information on the current state of lift maintenance. With a transparent record of EMSD's disciplinary system against RCs, lift owners can make an informed choice and the trade will view it as an incentive for upholding standards. Consumer choice means business and competition is a powerful tool for quality assurance.

Standards, Statistics, Monitoring and Analysis of Trends

10. Maintenance standards and time-lines for lift examination and submission of safety certificates are essential for EMSD to monitor the performance of RCs and REs and take enforcement action in cases of default. EMSD's standards and time-lines were unclear, and vital information and statistics were not available. During the investigation, we have observed a positive change in attitude and approach. We hope EMSD will invest time and efforts in setting clear standards and building up an operational information base.

Handling Overdue Cases

11. We observe that EMSD's timeframe of issuing reminders (seven weeks after a lift is overdue for examination) is long and inconsistent with the statutory timeframe to issue a Form 9 order (five weeks) and prohibition order (eight weeks). Although EMSD has tightened up the monitoring of lift examination and outstanding lift certificates, it should monitor and assess the effectiveness of these measures regularly.

Tracing Responsibility for Late Certificates

12. We note that EMSD cannot ascertain the party or parties responsible for delay in submitting lift certificates and a time-limit is not imposed on RCs to countersign the certificate before sending it to lift owners. Before any legislative amendment to plug the loophole, EMSD should require RC to record the date of issuing lift certificates to lift owners and impose administrative sanctions to repeated offenders for late submission of certificates.

Transparency of Disciplinary Records

13. Disclosure of EMSD's disciplinary records under the performance rating system is useful reference for lift owners in their selection of RCs. The potential damage to reputation and loss of business will urge RCs and REs to stay off EMSD's blacklist. As an additional incentive for adhering to good practices and high standards, we suggest that EMSD inform the insurance industry of the availability of the system on its website.

Display of Certificates

14. We observe that in many cases lift certificates are not displayed in a prominent position for easy reference and the print is small. EMSD should revise the format of the certificate to make it more legible, particularly with the expiry date boldly and clearly visible in standardised format.

Flaws in Disciplinary Action

15. EMSD normally should initiate disciplinary action if a RC or RE receives three warning letters within 12 months. In the only case EMSD considered for disciplinary actions on a RC, the following problems were identified:

(a) the Engineer who reviewed the case had failed to report the result to his supervisor and the case was not followed up subsequently;

(b) EMSD failed to issue four warning letters despite meeting the criteria due to computer error;

(c) EMSD issued five warning letters erroneously due to computer error.

16. EMSD should review and strengthen its procedures and pinpoint responsibilities in the administration of disciplinary measures. In addition, EMSD should review the procedures and criteria for issuing warning letters under PMPS, set out the rules and clarify their rationale, update the PMPS document and promulgate it to the trade.

Recommendations

17. The Ombudsman had made 13 recommendations to the Director of the Electrical and Mechanical Services, including the following:

(i) promote the principles of "shared responsibility" and "user surveillance" of lift safety through extensive publicity and public education;

(ii) revise the format of the lift certificate and enforce rigorously the requirement for its conspicuous display;

(iii) alert the insurance industry to the availability of the performance rating system;

(iv) invest time and efforts in setting standards and building up an information base;

(v) review in six months' time the mechanism for following up overdue lift examinations and lift certificates;

(vi) secure information on the date RCs issue lift certificates to lift owners and impose sanctions for non-compliance;

(vii) consider a proper code of practice and a hierarchy of accountability for determining whether or not to proceed with disciplinary action against a RC or RE, including the monitoring of the progress of disciplinary proceedings; and

(viii) review the procedures and criteria for issuing warning letters under PMPS, set out the rules and clarify their rationale, update the PMPS document and promulgate it to the trade.

18. EMSD has accepted our recommendations and provided us with a tentative timetable for implementation.

Office of The Ombudsman
August 2009

1

INTRODUCTION

BACKGROUND

1.1 In high-rise Hong Kong, lifts take us from floor to floor every day, at home and at work. We assume they will carry us to our destination with speed and in safety. Recent failures of lifts in a series of incidents have shaken our faith. In one case at the end of October 2008, a lift in Fu Shin Estate in Tai Po crashed down from 14^{th} floor. Seven of its eight suspension ropes were found to be broken subsequently. Other incidents followed in quick succession: in Wan Tau Tong Estate, Tai Po (9 November 2008), Heng On Estate in Ma On Shan (11 January 2009) and Westlands Centre in Quarry Bay (12 March 2009).

1.2 These triggered grave public concern. Under urgent probing by the Panel on Development and Panel on Housing of the Legislative Council, Electrical and Mechanical Services Department ("EMSD") sprang into action to step up surveillance and enforcement.

1.3 In the community, questions were raised as to what regulatory regime is in place to ensure lift safety, how the system works, whether it is effective and whether the new measures suffice.

PURPOSE AND AMBIT

1.4 Against this background, The Ombudsman declared, on 15 January 2009, under section 7(1)(a)(ii) of The Ombudsman Ordinance (Cap. 397), a direct investigation into the monitoring of lift safety by EMSD, covering the following aspects:

(a) lift examination requirements under the Lift and Escalators (Safety) Ordinance (Cap. 327);
(b) EMSD's monitoring measures;
(c) the effectiveness of the regulatory framework; and
(d) possible areas for improvement.

1.5 Our investigation examines the administrative aspects of EMSD regulation and monitoring to ensure lift safety. Technical issues such as safety standards and vocational qualifications for inspection and maintenance personnel are outside the ambit of our investigation.

METHODOLOGY

1.6 In our investigation, we had full cooperation from EMSD. They have provided us with departmental guidelines, procedures and statistical data. Our investigators joined EMSD staff in their inspection of lifts and met with parties with direct involvement in, or first-hand information of, the regulatory scheme. In addition, we studied Legislative Council papers on the subject and relevant media reports and press comments on the recent incidents.

PUBLIC VIEWS

1.7 We openly invited submissions from the public. In response, five citizens have written in.

INVESTIGATION REPORT

1.8 On 30 July 2009, a Draft Investigation Report was sent to the Director of Electrical and Mechanical Services for comments. Having duly considered and incorporated their comments as appropriate, we issued this Final Report on 24 August 2009.

2

REGULATION OF LIFTS

OVERVIEW

2.1 Lifts in Hong Kong are subject to the Lifts and Escalators (Safety) Ordinance (Cap. 327) ("the Ordinance") administered by EMSD[1]. The number of lifts regulated under the Ordinance has increased from 44,006 in 2003 to 48,828 in 2008.

2.2 The regulatory framework rests on three legs:

(a) statutory certification whereby a lift owner is to ensure that the lift is serviced and examined by qualified personnel in regular cycles and that there is a safety certificate, signed by a registered lift engineer ("RE") and endorsed by EMSD, on conspicuous display in the lift;

(b) registration of contractors and lift engineers for repair and maintenance works, underpinned by an administrative demerit point system called Performance Monitoring Points System ("PMPS") and disciplinary sanctions; and

(c) direct inspection of lifts by EMSD for monitoring compliance with and enforcement of specific provisions in the Ordinance.

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[1] *The Ordinance has specified exceptions such as lifts in buildings belonging to Government, Housing Authority or Government of a foreign country for official business of consular officers.*

CERTIFICATION OF LIFTS

2.3 Under the Ordinance, a lift has to be examined by a RE at least once every 12 months. The Ordinance stipulates that if EMSD does not receive the prescribed lift certificate ("Form 11") (sample at **Annex**) within 35 days of 12 months after the previous lift examination (hereafter referred to as "overdue" cases), EMSD may issue an order ("Form 9") requiring the lift owner to take action within a specified time. In this connection, EMSD is empowered under the Ordinance to prohibit the use of the lift by a prohibition order ("Form 16") if the certificate is not received 21 days after serving a Form 9.

2.4 After a lift examination, the RE must within 21 days deliver a certificate in duplicate to the lift owner that the lift is in safe working order. The Ordinance stipulates that if the RE is employed by a registered lift contractor ("RC"), the RC must countersign the certificate before it is forwarded to the lift owner. However, while the lift owner is required to deliver the certificate to EMSD, with the specified fee within seven days of the signed certificate from the RC, the law does not expressly sets a time limit for the RC to countersign or forward the certificate to the lift owner. REs and lift owners who fail to observe the statutory time-line commit an offence subject to a fine of $5,000 and imprisonment of six months.

2.5 When EMSD receives the lift certificate and is satisfied that everything is in order, they will have a copy of the certificate signed and returned to the lift owner. The certificate is then to be displayed in a conspicuous position in the lift. Failure to do so is an offence subject to a fine of $5,000 and imprisonment of six months.

2.6 If on a lift examination the RE is not completely satisfied with the condition of the lift, but accepts that there is no immediate danger, he has the statutory duty to report deficiencies to the lift owner who then has to take remedial action and arrange for the RE to re-inspect the lift within 14 days from the date of the lift examination. If on re-inspection the lift is considered safe, the RE will issue a lift certificate in duplicate (**para. 2.4**). If not, the RE should theoretically report to EMSD for direct inspection and enforcement action. In practice, since the RE is an employee of the RC, the RE will normally approach the RC first.

REGISTRATION OF ENGINEERS AND CONTRACTORS

2.7 Under the Ordinance, only contractors and lift engineers registered with EMSD can carry out repair and maintenance of lifts. To qualify as a RE, a person has to obtain a higher diploma or higher certificate in the relevant discipline and possess five years' relevant working experience. He has to satisfy EMSD that he has the experience and knowledge to perform the duties of a RE through a written examination and an interview. Similarly, to be a RC, the lift contractor has to satisfy EMSD that his employees are qualified and experienced to supervise and carry out lift works.

2.8 The Ordinance stipulates that the Director of Electrical and Mechanical Services may refer a RC or a RE to a disciplinary board to be appointed by the Secretary for Development, on grounds of negligence or misconduct in carrying out lift works. The board may after inquiry order to reprimand the RC or the RE, to remove them from the register and to publish the findings of the inquiry in the Government Gazette.

2.9 As at the end of 2008, there were 49 RCs and 260 REs.

DIRECT INSPECTION AND ENFORCEMENT

2.10 EMSD officers adopt a risk-based approach to lift inspection for checking the condition of lifts and monitoring the performance of RCs and REs. These inspections are conducted in the presence of the RC and the RE. Any aspect of non-compliance will be pointed out to the RC and the RE informally on the spot for attention. Separately, the EMSD inspector will report his findings in writing to his supervisor, an Engineer by profession. Upon the supervisor's approval of the report, EMSD will formally notify the RC and the RE of any aspects requiring rectification. The RC is then under obligation to complete the rectification works and inform EMSD, which may or may not undertake follow-up inspection.

2.11 In the above procedures, whether any non-compliance identified in an inspection is rectified in time depends on the promptitude of EMSD in issuing a letter to require the RC to undertake rectification works and to report the results to EMSD. Despite this being a time-critical matter, EMSD has until very recently **(para. 3.2(d))** set no rules or any performance pledge for such key action.

2.12 EMSD has kept no statistics on the actual or average time taken to issue the letters to RCs. In the course of our investigation, we came across four cases and examined them. In these cases, the time gap between identification of non-compliance in an inspection and the issuance of a letter to the RC ranged from one to 22 days.

Lift Examination and Submission of Certificates for Endorsement

2.13 The effectiveness of the certification system (**paras. 2.3 – 2.5**) hinges on:

- the lift owner getting a RC in good time;
- the RC arranging for inspection by a RE promptly;
- the RE submitting a timely certificate to the owner after the inspection; and
- the owner putting the certificate to EMSD for endorsement within the prescribed period.

2.14 Delay in these actions, however, is common. The number of cases where EMSD receives lift certificates over 28 days (**para. 2.4**) after a RE has conducted lift examination is significant and on the increase as shown in Figure 1.

Figure 1: Compliance with Statutory Requirement for Submitting Lift Certificates and Enforcement by EMSD

	2005	2006	2007	2008
a. Certificates received by EMSD	47,280	47,042	49,204	50,160
b. Certificates received over 28 days after lift examination by REs (as % of (a) above)	28,116 (59.5%)	25,492 (54.2%)	27,188 (55.3%)	33,191 (66.2%)
c. Lifts overdue for 35 days (**para. 2.3**) (as % of (a) above)	16,623 (35.16%)	15,727 (33.43%)	18,276 (37.14%)	18,660 (37.2%)
d. Reminder letters issued (**para. 2.17**)	589	710	924	1,429
e. Chasers issued (**para. 2.18**)	44	92	153	0*
f. Form 9 orders issued for breach of (c)	1	1	0	0
g. Form 16 issued for non-compliance of Form 9 orders	0	1	0	0
h. Prosecutions by EMSD for overdue submission of certificates	0	0	0	0

* *EMSD has suspended issuing chasers since 2008 (**para. 2.18**).*

Source: EMSD

2.15 As to the cause(s) of delay, EMSD has no information. In fact, EMSD does not know whether in those cases the RE, RC or the lift owner is responsible. Although the design of the certificate is such as to establish clearly when the RE has signed it (see the date field on top right hand corner of certificate at **Annex**), correct entry in this box is not always made or insisted upon.

2.16 A further complication is that although the Ordinance specifies the time limit by which RE has to sign a certificate, submission of the certificate to the lift owner is by the RC and no express time limit is prescribed for this step under the Ordinance (**para. 2.4**).

Handling of Overdue Certificates

2.17 According to departmental procedures, EMSD will issue a reminder letter to both the lift owner and the RC when a certificate has been overdue for 49 days or more. This time-line is set administratively by EMSD, counting the 14 days available for rectification of minor defects by the RE (**para. 2.6**), the 21 days within which the RE has to pass the certificate (through the RC) to the lift owner (**para. 2.4**), the seven days for lift owners to pass the certificate to EMSD (**para. 2.4**) and further seven days as allowance for postal delay.

2.18 Such a time-line is too long as the purpose of certification is for safety assurance. However, it still compares well with EMSD practice before 2008: EMSD used to issue further chaser(s) to the lift owner and the RC 11 weeks from the date of the reminder letter, or 126 days after the lift examination is overdue.

2.19 EMSD has the power under the Ordinance to require a lift owner to examine a lift by way of a Form 9 order (**para. 2.3**). EMSD does not have guidelines on issuing a Form 9 order but has indicated to us that such direct action will be considered according to such factors as the status of the lift, its safety record, the attitude of the lift owner, his readiness and ability to secure a lift examination and the risk in the continued use of the lift.

2.20 In practice, however, EMSD seldom issues a Form 9 order if the lift is still under the maintenance of a RC. Since 2005, EMSD has issued only two such orders: the first case on Day 142, after serving a reminder on Day 54 and a chaser on Day 102; the second on the RC's request for deferment of lift examination on Day 27 and Day 61, as access to the lift pit was blocked. In the latter case, EMSD asked the

RC to remove the obstruction immediately after a site inspection on Day 88. On Day 103, EMSD issued a Form 9 order upon non-compliance by the RC, followed by a Form 16 (**para. 2.3**) on Day 124.

Performance Monitoring Points System

2.21 EMSD has implemented the PMPS (**para. 2.2(b)**) since 1992 to monitor the performance of RCs and REs. The latest version of PMPS has been circulated to all RCs and REs in 2005 and is available on EMSD's website. PMPS sets out a check-list for non-compliance under six categories (A to F) with different degrees of seriousness and a demerit point system corresponding to non-compliance and the conditions for EMSD warning letters.

Lift Inspections

PMPS Lift Inspections

2.22 In lift inspections under PMPS, EMSD inspectors make advance appointments with RCs. During the process, EMSD inspectors will accord Performance Monitoring ("PM") points for non-compliance found and issue a warning letter to the RC and/or RE concerned, if any of the following occurs:

(a) a serious non-compliance item under category A (**para. 2.21**) is found;

(b) a cumulative total of 12 PM or more points is reached in a lift inspection;

(c) the 12-month moving average of PM points accumulated in the account of RC or RE reaches four points or more when the number of lifts inspected by EMSD over the period is not less than ten. The moving average point is arrived at by dividing the total number of PM points recorded by the number of lift inspections conducted over a 12-month period.

Non-PMPS Lift Inspections

2.23 According to EMSD, the findings of lift inspections under PMPS cannot be disclosed to lift owners as PMPS is an agreement only between EMSD and RCs and REs. In 2005, EMSD introduced a new policy under which the number of PMPS lift inspections was reduced, with resources diverted to a new type of surprise inspection. In such surprise inspections, RCs would not know beforehand which lifts EMSD inspectors were to inspect. As EMSD inspectors could not accord PM points for non-compliance found during surprise inspection, they would notify lift owners directly in writing to enable their monitoring of the performance of the RC.

2.24 From 1 June 2009, EMSD has replaced these two types of inspection with new arrangements, detailed in **para. 3.2 (f)**.

Disciplinary Action under PMPS

2.25 EMSD has detailed procedures governing disciplinary action against RCs and REs. Disciplinary cases are normally initiated by EMSD Engineers with senior Directorate agreement and are heard by a disciplinary board (**para. 2.8**). As for grounds for initiating cases, EMSD will consider taking action if a RC or a RE receives three warning letters within 12 months. Statistics obtained from EMSD, however, show that no RC or RE has been subject to disciplinary action since 2005, despite 39 and 30 warning letters issued in the same period. In fact, there was only one case during the period of 2005 to 2008 where EMSD had considered taking disciplinary action. The case is discussed below.

Facts of the Case

2.26 From 2006 to 2007, EMSD issued ten warning letters to a RC as summarised in **Figure 2**:

Figure 2: Warning Letters to a RC from 2006 to 2007

	Date of Issue	Reason
1.	17 March 2006	In each lift inspection, PM points accorded by EMSD inspectors totalled or exceeded 12 (**para. 2.22(b)** above)
2.	3 May	
3.	6 July	
4.	13 January 2007	
5.	2 March	The 12-month moving average of PM points from March 2006 to February 2007 exceeded four in over ten lift inspections (**para. 2.22(c)** above).
6.	6 June	In each case, the respective 12-month moving average of PM points exceeded four. However, these warning letters were mistakenly issued because in each case the number of lifts inspected in the respective past 12 months was below ten (**para. 2.22(c)** above).
7.	24 August	
8.	6 September	
9.	2 November	
10	23 November	

Source: EMSD

EMSD's Internal Review of the Case

2.27 In July 2006, an EMSD Engineer ("Engineer A") reviewed whether the evidence collected during the lift inspections on 12 January, 25 April and 29 May 2006 (which led to the issue of three warning letters in items 1 – 3 in **Figure 2** above) constituted sufficient grounds for disciplinary action against the RC. In the event, his view was that mere existence of defects at the time of the lift inspections might not be conclusive enough. It could not be put beyond reasonable doubt that the defects were known to the RC at the material time and that no tampering had occurred since the RC's inspection of the lift.

2.28 Engineer A submitted his opinion to his supervisor, a Senior Engineer, who then wrote to another Senior Engineer to see if there were ways to collect sufficient evidence. The latter Senior Engineer asked another Engineer ("Engineer B") to review. Engineer B considered the defects identified in lift inspections insufficient to take disciplinary action and so responded to Engineer A, who then asked Engineer B to advise the Senior Engineers accordingly. At that point, the case stopped and there is no record of any subsequent action.

Warning Letters Not Generated and Issued

2.29 We note that in each of the five months from November 2006 to March 2007, the 12-month moving average of PM points of the RC exceeded four with over ten lifts inspected by EMSD. According to the criteria in **para. 2.22(c)** above, EMSD should have issued a warning letter to the RC in each of those five months. However, only one was issued to the RC in March 2007 (item 5 in **Figure 2** above). EMSD has explained that the other four warning letters due from November 2006 to February 2007 were not generated owing to computer error, which was later fixed in March 2007.

Warning Letters by Mistake

2.30 EMSD issued five warning letters to the RC from June to November 2007 (items 6 – 10 in **Figure 2** above) as the moving average of PM points had exceeded four in each case. However, those letters should not have been issued as the number of lifts inspected in those respective 12-month periods was below ten (**para. 2.22(c)**). EMSD has explained that the issue of those warning letters was due to a defect in the design of the computer system. The error was identified in December 2007 and rectified in September 2008.

2.31 According to EMSD's workflow, warning letters issued to RCs for exceeding the moving average of PM points are prepared by clerical staff and reviewed by an Engineer or Senior Engineer. A Chief Engineer will give approval for issue. However, despite these checks, five warning letters were still wrongly issued.

2.32 In concluding the case study, we consider that effective action requires due care by conscientious staff as well as good systems. A computerised data-base with the ability to generate warning letters automatically greatly helps. However, it is still EMSD's responsibility to ensure that in case of system failure, errors and omissions are detected and corrected in time.

3

Improvement Measures

3.1 After the incident at Fu Shin Estate (**para. 1.2**), EMSD has taken immediate measures to strengthen the regulatory regime. These major initiatives, except item (a), have been implemented and reported to the Panel on Development and Panel on Housing of the Legislative Council:

(a) review of the system of RE registration and level of penalties under the Ordinance;

(b) increase of inspections from one lift out of ten to one lift out of seven by staff redeployment;

(c) inspection of all lifts in housing estates under the Tenant Purchase Scheme;

(d) introduction of a new type of surprise inspection from January 2009 with EMSD selecting lifts from lift examination schedules submitted by RCs in advance through an e-platform. During the inspections, EMSD staff will also examine the entries in the log-book kept by the lift owners to verify whether the RE had examined the lifts personally;

(e) enhancement of public awareness of lift safety and advice to lift owners about maintenance and procurement of such services.

In this connection, EMSD has set up an enquiry hotline 2333 3762, organised more than ten seminars for the public, launched TV announcement in the public interest ("API") on lift safety in December 2008 and March 2009 and updated a guidebook for distribution to lift owners;

(f) an undertaking to announce serious lift incidents on EMSD's website within 12 hours after confirmation and to release summary of reports on such incidents regularly; and

(g) from June 2009, introduction of a performance rating system so that RCs' performance records are released for public scrutiny. Performance of RCs will be rated by a score derived from the PMPS. The scores are to be published in September 2009 and updated quarterly. EMSD plans to publish on a regular basis the number of warning letters issued to RCs, with a brief description of the reasons.

3.2 Moreover, during the course of our investigation, EMSD has introduced further measures, some in response to our inquiries:

(a) On information from RCs on the e-platform (**para. 3.1(d)**), EMSD will remind RCs and/or lift owners of lift examination before the due date, conduct site inspection on lifts overdue for lift examination, and work to the statutory time-line governing orders to lift owners for lift examination (Form 9), to be followed by the issuance of a prohibition order (Form 16) where necessary (**para. 2.3**);

(b) In cases where a lift has been examined by RE but EMSD does not receive the certificate, EMSD will issue reminders to lift owners and/or RCs when trigger points are activated. EMSD will initiate investigation and take appropriate action (**para. 2.4**) when a certificate has been overdue for 12 weeks;

(c) Since the statutory requirement for examining a lift in 12 months (**para. 2.3**) counts from the date of the previous inspection and not the original due date for inspection, delaying

a lift inspection may result in some financial savings for the lift owner. Although such may not be a material consideration in most cases, EMSD has agreed to issue an advisory or a warning letter to the RC and RE on repeated late examination of lifts;

(d) Issue follow-up letters to RCs within five working days after lift inspection to require rectification of any non-compliance (**paras. 2.10 – 2.11**);

(e) Issue a circular to remind REs to fill in the date in the date field when signing lift certificates to facilitate ascertaining the party responsible for delaying submission of certificates (**para. 2.15**); and

(f) From 1 June 2009, all lift inspections by EMSD officers which will lead to PM points being recorded do not require advance appointment with the RC and RE. As an administrative measure to overcome the problem of not being able to disclose to lift owners PM points on defects identified in surprise inspections, EMSD has revised the agreement with the trade (**para. 2.23**) that lift owners will be notified of the items of non-compliance as PM points are simultaneously accorded to the RC and/or RE.

3.3 These are further steps in the right direction. However, areas for improvement remain still.

4

OBSERVATIONS

OVERVIEW

4.1 EMSD's positive action following the recent spate of lift incidents is commendable, though reactive. Increase in direct inspection and firm enforcement will result in immediate improvement. However, to enhance lift safety in general, problems must be tackled at source. Lifts are practically a daily necessity for most people and lift safety must be a prime concern. Meanwhile, EMSD will always have limited resources and competing priorities. For fundamental improvement, therefore, not only must the regulatory regime be sound and workable, but the different parties must play their part responsibly.

Shared Responsibility and User Surveillance

4.2 Lift safety is a shared responsibility. Government alone cannot, and should not, assume total responsibility for inspection and maintenance of each and every lift in Hong Kong. That is neither reasonable nor realistic. The regulatory regime operates on the basis that lift safety is the primary responsibility of lift owners and they should share it with the RCs and REs they engage to service their lifts. Lift users, too, have a role: the conspicuous display of a safety certificate in the lift facilitates and encourages "user surveillance", a powerful principle for self-protection.

4.3 Lift owners and lift users have a personal stake in the safety of the lifts they own or use. It is clearly in their own interests to be watchful, to check for irregularities, to raise queries and to complain when necessary.

4.4 The safety certificate is a key instrument in enabling "user surveillance". It links the key parties: owners, contractors, maintenance personnel and EMSD as well as users. In the procedures for its issuance and renewal, the roles and responsibilities of the respective parties are pinpointed. The certificate is, in effect, a public statement by a competent authority that a lift has been inspected and certified safe by qualified personnel at specific intervals. Properly documented, the certificate is both a safety assurance and a key source of information on the current state of lift maintenance.

4.5 For clarity of a message of such importance, design of the certificate needs revision. A basic requirement is legibility, especially for the expiry date of the certificate. The rule that the certificate must be displayed conspicuously must also be strictly enforced.

4.6 The prime mover and monitor for "shared responsibility" and "user surveillance" must be EMSD. They should promote both principles by extensive publicity and public education.

Registration of RC and RE

4.7 The system for registration of RC and RE (**paras. 2.7 – 2.8**) as stipulated in the Ordinance and the administrative PMPS (**para. 2.21**), by their design, should be able to ensure the proper discharge of duty by RCs and REs with a fair and rigorous application of demerit points and prompt disciplinary action. In this context, the PMPS should be open and transparent, so that lift owners can make an informed choice and the trade will view it as an incentive for upholding standards. Consumer choice means business and competition is a powerful tool for quality assurance.

OPERATIONAL ISSUES

Standards, Statistics, Monitoring and Analysis of Trends

4.8 The incidents examined in Chapter 2 and the new measures outlined in Chapter 3 indicates that in some critical areas EMSD's standards and time-lines were unclear, and vital information and statistics were not available although the department does have basic management information such as the type, configuration and age of lifts, their maintenance status and case histories. In the course of this

investigation, we have observed a positive change in attitude and approach in EMSD. In particular, EMSD has tightened up the monitoring of lift examination and submission of lift certificates (**para. 3.2**). We envisage that EMSD will invest time and efforts in setting clear standards and building up an operational database which will truly facilitate monitoring of performance and analysis of trends.

Handling of Overdue Certificates

4.9 The prevalent number of overdue certificates (**para. 2.14**) suggests significant deficiencies in EMSD's previous arrangements (**paras. 2.17 – 2.18**). Our investigation reveals the following key problems:

(a) long and illogical timeframe for issuing reminder and chaser(s). Rectification of defects and deficiencies in safety must never be subject to delay. Administrative oversight is not an excuse for omission of duty. EMSD must recognise that failure to follow up an overdue case may incur danger to life and limb. There can be no room for a lax attitude or half-hearted approach.

(b) EMSD timeframe for ordering lift examination and prohibiting use of a lift inconsistent with the law. Under the Ordinance, EMSD can order a lift examination after a lift certificate is overdue for five weeks and issue a prohibition order three weeks after non-compliance of EMSD's order for lift examination (**para. 2.3**). Before June 2009, EMSD issued a reminder letter only after a lift certificate is overdue for seven weeks (**para. 2.17**), which is two weeks after it could have ordered a lift examination.

We are pleased that EMSD has since June 2009 put in place a rigorous system to follow up overdue cases of lift examinations and to chase for outstanding lift certificates (**para. 3.2 (a) - (b)**).

Tracing Responsibility for Late Certificates

4.10 We have pointed out that EMSD cannot ascertain the party or parties responsible for delay in submitting lift certificates (**paras. 2.15 – 2.16**) and that a discrepancy exists in not imposing a time-limit on RCs to countersign the certificate

before sending it to lift owners (**para. 2.4**). Both deficiencies require urgent review by EMSD.

4.11 We understand that in the review of the Ordinance, EMSD intends to propose a new arrangement whereby the lift certificate is to be signed and submitted to EMSD directly by the RE. While it may be a long-term solution, measures should be taken to overcome the problem immediately. One option is to require RCs to record the date of issuing certificates to lift owners and pass the information to EMSD through the e-platform (**para. 3.1(d)**). This should enable EMSD to identify the party responsible if there is delay and impose administrative sanctions if a RC is found to be a repeated offender.

Order of Lift Examination

4.12 Issuance of a Form 9 for direct inspection, to be followed by a prohibition order (Form 16) (**para 2.3**), should be a potent tool to ensure diligence of lift owners and safety of lifts. Despite the large number of cases overdue from 2005 to 2008 (**para. 2.14**), EMSD had acted only twice when lift certificates became seriously overdue (**para. 2.20**). Moreover, in the two cases we examined, we could find no documentation of justification for not exercising its statutory powers. This is poor administrative practice and should be corrected.

4.13 It is gratifying that EMSD has decided to adhere to the statutory timeframe for ordering an examination of a lift (**para. 3.2(a)**).

Follow-Up Action on Lift Inspections

4.14 Monitoring RCs' remedial works found to be necessary during EMSD's inspections is important. This ensures that problems identified are rectified promptly and properly. We welcome EMSD's proposal to improve the monitoring of action to follow up lift inspections (**para. 3.2(d)**).

Transparency of Disciplinary Records

4.15 Disclosure of EMSD's disciplinary records under the performance rating system (**para. 3.1(g)**) is useful reference for lift owners in their selection of RCs. The potential damage to reputation and loss of business will urge RCs and REs to stay off EMSD's blacklist. As an additional incentive for adhering to good

practices and high standards, we suggest EMSD inform the insurance industry of the availability of the performance rating system on its website.

Design and Display of Certificates

4.16 Despite the requirement in the Ordinance (**para. 2.5**), in many cases lift certificates are not displayed in a prominent position conspicuous or convenient enough for ready reference. Meanwhile, the print is small. EMSD should revise the certificate to be easily legible, particularly with the expiry date boldly and clearly visible in standardised format.

Flaws in Disciplinary Action (paras. 2.26 – 2.31)

4.17 EMSD did not follow its established procedures to review whether to initiate disciplinary action (**para. 2.25**), resulting in a case of repeated infringement of the rules not being followed through. To prevent similar incidents in future, EMSD should consider a proper code of practice and a hierarchy of accountability for determining whether or not to proceed with disciplinary action against a RC or RE. This should include the monitoring of the progress of disciplinary proceedings for fair administration.

4.18 In the case study, five warning letters were issued erroneously without being spotted by those who prepared them or the one who signed them (**para. 2.31**). Surprisingly, the RC did not object on receipt of the letters: does that signify disrespect for the system; or reflect a common disregard for such letters as no more than "empty threats"?

4.19 EMSD should review not only the procedures, but particularly the criteria, for issuing warning letters under PMPS, set out the rules and clarify their rationale, update the PMPS document and promulgate it to the trade.

Citizens' Views

4.20 Citizens who have written in to us (**para. 1.7**) generally expressed concern on lift safety. In this context, they have suggested EMSD upgrading the requirement for registration, revisiting the role of REs and reviewing technical issues under the code of practice in lift examination. We note that it is an area under review by EMSD (**para. 3.1(a)**).

5

RECOMMENDATIONS

5.1 We appreciate the measures taken or to be taken by EMSD to improve lift safety which have been highlighted in **Chapter 3**. We would keep a watching brief to ensure that EMSD diligently follows through these measures and that they achieve the desired results.

5.2 On the basis of EMSD's improvement measures and our observations, The Ombudsman has made recommendations to the Director of Electrical and Mechanical Services:

(a) Shared Responsibility and User Surveillance

(i) promote the principles of "shared responsibility" and "user surveillance" of lift safety through extensive publicity and public education (**para. 4.6**);

(ii) revise the format of the lift certificate and enforce rigorously the requirement for its conspicuous display (**paras. 4.5 and 4.16**);

(b) Registration of RC and RE

(iii) introduce transparency in the PMPS and performance rating scores (**para. 4.7**)

(iv) alert the insurance industry to the availability of the performance rating system (**para. 4.15**);

(c) Standards, Statistics, Monitoring and Analysis of Trends

(v) invest time and efforts in setting standards and building up an information base (**para. 4.8**);

(vi) review in six months' time the mechanism for following up overdue lift examinations and lift certificates (**para. 4.9**);

(vii) prescribe an express time limit for RCs for endorsing safety certificates and sending them to lift owners (**para. 4.10**);

(viii) require RCs to record the date of issuing lift certificates to lift owners (**para. 4.11**);

(ix) secure information on the date RCs issue lift certificates to lift owners and impose sanctions for non-compliance (**para. 4.11**);

(x) issue advisory or warning letters to RCs or REs for repeated late examination of lifts as soon as possible (**para. 3.2(c)**);

(xi) remind REs to fill in the date of signing lift certificates properly as soon as possible (**para. 3.2(e)**);

(d) Disciplinary Action

(xii) consider a proper code of practice and a hierarchy of accountability for determining whether or not to proceed with disciplinary action against a RC or RE, including the monitoring of the progress of disciplinary proceedings (**para. 4.17**); and

(xiii) review the procedures and criteria for issuing warning letters under PMPS, set out the rules and clarify their rationale, update the PMPS document and promulgate it to the trade (**para. 4.19**).

Citizens' Views

5.3 Suggestions from citizens who have written in to this Office mainly concern personnel and technical issues. Nevertheless, the Director of Electrical and

Mechanical Services should also give due consideration to these areas in the context of their legislative review.

COMMENTS FROM EMSD

5.4 EMSD has accepted our recommendations and provided a tentative timetable for their implementation.

5.5 EMSD emphasises that although some of the time-lines, information and statistics identified in this report have not been captured, their present information base contains statistics and reports which assist in their enforcement activities and internal monitoring of performance.

ACKNOWLEDGEMENT

5.6 The Ombudsman thanks the Director of Electrical and Mechanical Services and his staff for their cooperation throughout this investigation.

Office of The Ombudsman
Ref.: OMB/DI/188
August 2009

ANNEXES

機電工程署
EMSD

Annex
(para. 2.3)

香港特別行政區政府
表格 11
升降機及自動梯(安全)條例(第 327 章)
第 26(1)(a) 及 39(1) 條
定期檢驗升降機或定期測試其安全設備或兩項一併進行之證明書

收據編號
RECEIPT NO. [| | | | | |]

地點編號: [| | | | | | | |]—[| | |]

日期 ____________

致：機電工程署署長
裝置於 ________________ 之第 ________ 號升降機
本人 ________________ 為註冊升降機工程師 (編號 L__________)，茲證明——
*(甲) 本人曾於______ 年______ 月______ 日按照升降機及自動梯（安全）條例（第 327 章）第 21 條之規定，檢驗上述升降機。
(乙) 本人曾於______ 年______ 月______ 日按照升降機及自動梯（安全）條例（第 327 章）第 23（1）(a)，*(b)，*(c) 及*(d)條之規定，測試上述升降機之安全設備。
本人於______ 年______ 月______ 日認為*上述升降機*及上述升降機之安全設備效能良好，操作安全。

*將不適用者刪去

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
FORM 11
LIFTS AND ESCALATORS (SAFETY) ORDINANCE (CHAPTER 327)
Sections 26(1)(a) and 39(1)
Certificate on periodic examination of lift or periodic testing of safety equipment provided therefor, or both

Date ____________

Location No. [| | | | | | | |]—[| | |]

To: The Director of Electrical and Mechanical Services
Lift No.______________ installed at ______________________
I, ______________________, registered lift engineer (No. L__________), certify that ——
*(a) the above lift was examined by me in accordance with section 21 of the Lifts and Escalators (Safety) Ordinance (Chapter 327), on the __________ day of __________, ______.
(b) the safety equipment provided for the above lift was tested by me in accordance with section 23(1)(a), *(b), *(c) and *(d) of the Lifts and Escalators (Safety) Ordinance (Chapter 327), on the __________ day of __________, ______.
I am satisfied that, on the __________ day of __________, ______, *the above lift *and the safety equipment provided for the above lift was in safe working order.

*Delete whichever is inapplicable

承建商編號
Contractor Number RLC [| | | | |]

____
____
____
____

升降機的擁有人姓名及地址
Name and address of owner

____
註冊升降機承建商簽署
Signature of registered lift contractor

____
註冊升降機工程師簽署
Signature of registered lift engineer

茲根據升降機及自動梯（安全）條例（第 327 章）第 39(1)條之規定，證明經已收到由註冊升降機工程師簽發之上述證明書，並且予以登記。
Pursuant to section 39(1) of the Lifts and Escalators (Safety) Ordinance (Chapter 327), I certify that the above certificate issued by the registered lift engineer was received and registered.

日期____________
Date

____
機電工程署署長 (代行)
( )
for Director of Electrical and Mechanical Services

✧✧ 小心升降機門 Keep Clear of Lift Door ✧✧

EMSD/LE 11

注　意

1. 升降機的擁有人，須在收到此證明書後七天之內繳交指定的款項。各項指定的款項列於隨附的收費表上。
2. 經批註的證明書須張貼在升降機內當眼處，直至收到另一份同類證明書為止。

繳 款 辦 法

1. 款項可照下列辦法繳交：——

   (甲) 郵寄香港九龍啟成街三號機電工程署署長收。繳款時請將白色和黃色表格一併寄回。已批註之白色表格及編號收據將會稍後寄回繳款人。

   注意：請勿郵寄現金。

   (乙) 前往香港九龍啟成街三號地下機電工程署客戶服務部繳交。交款時請攜同白色及黃色表格，收款人會即時發回編號收據。已批註之白色表格將會稍後寄回繳款人。

   收款時間：——

   星期一至星期五——上午九時至下午五時十五分

2. 凡支票、匯票及本票均須書明支付「香港特別行政區政府」並加劃線，切勿寫明支付個別職員。期票將不予接納。

NOTES

1. The owner of the lift shall pay the prescribed fee within 7 days of the receipt of this certificate. The prescribed fee is indicated in the Schedule of Fees being attached.
2. The endorsed certificate shall be posted in a conspicuous position in the lift until another such certificate is received.

PAYMENT INSTRUCTIONS

1. Payment may be made : ——

   (a) BY POST addressed to the Director of Electrical and Mechanical Services, Electrical and Mechanical Services Department, 3 Kai Shing Street, Kowloon, Hong Kong. Both the white and yellow copies of this form must accompany payment. The white copy after endorsement will be returned together with a serially numbered receipt.

   N.B.: CASH SHOULD NOT BE SENT THROUGH THE POST.

   (b) IN PERSON at the Customer Services Office of the Electrical and Mechanical Services Department, Ground Floor, 3 Kai Shing Street, Kowloon, Hong Kong. Please produce both the white and yellow copies of this form at time of payment. A serially numbered receipt will be issued. The white copy after endorsement will be returned separately.

   HOURS OF COLLECTION : ——

   Monday to Friday 9:00 a.m. to 5:15 p.m.

2. Cheques, Drafts and Cashier Orders should be made payable to 'The Government of the Hong Kong Special Administrative Region' and crossed. They must not be made payable to any individual officer. Post-dated cheques will not be accepted.

申請可經由電子方式遞交，詳情請瀏覽：

Application may be submitted electronically. For details, please refer to:

http://www.emsd.gov.hk/emsd